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No. 02-1019

In the Supreme Court of the United States

STATE OF ARIZONA, PETITIONER

v.

RODNEY JOSEPH GANT

ON WRIT OF CERTIORARI TO THE ARIZONA COURT OF APPEALS, DIVISION TWO

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether a police officer may search the passenger compartment of an automobile as a contemporaneous incident of the lawful custodial arrest of the vehicle's recent occupant when the arrestee exited the vehicle voluntarily rather than on police direction.

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INTEREST OF THE UNITED STATES

This case presents the question whether a police officer may search the passenger compartment of an automobile as a contemporaneous incident of the lawful custodial arrest of the vehicle's recent occupant when the arrestee exited the vehicle voluntarily rather than on police direction. The resolution of that question will affect the practices of federal law enforcement officers in the commonly recurring situation in which the recent occupant of a vehicle is arrested. In addition, it will affect the admissibility in federal prosecutions of evidence obtained by federal, state, or local law enforcement agents as the result of the search of an automobile incident to the lawful arrest of an individual who has

recently occupied the vehicle. The United States addressed the same question in *Florida* v. *Thomas*, 532 U.S. 774, 776 (2001), but this Court dismissed the writ of certiorari in that case for want of jurisdiction.

STATEMENT

Following a jury trial in the Superior Court for Pima County, Arizona, respondent was convicted of possession of cocaine for sale and possession of drug paraphernalia. He was sentenced to concurrent terms of imprisonment not exceeding three years. The Arizona Court of Appeals, Division Two, reversed.

1. On August 25, 1999, Tucson police officers responded to a report of possible drug activity at a residence on North Walnut Avenue. Respondent answered the door and said that the resident was out. After learning that respondent had an outstanding warrant for failure to appear and a suspended driver's license, the officers returned to the house later in the day and came upon a man and a woman outside the house. The woman had a crack pipe. The officers then saw a vehicle drive up to the house. As the car pulled into the driveway, an officer shined a flashlight into the car and recognized respondent from earlier in the day. The officer walked to the car as respondent got out of it and called respondent's name. The officer arrested respondent on the outstanding warrant and for operating a vehicle without a valid driver's license, handcuffed him and put him in the back of his patrol car, and then searched the passenger compartment of respondent's vehicle. The search revealed a handgun and a bag of cocaine. Pet. App. A2-A3; J.A. 10-11.

2. Respondent filed a pre-trial motion to suppress the evidence seized during the search of the vehicle he had occupied just before his arrest. The trial court

denied that motion, finding that respondent's arrest was lawful and that the search of his car was a lawful incident of that arrest under *New York* v. *Belton*, 453 U.S. 454 (1981). J.A. 30-32, 36. The court explained that "[o]nce the officers saw [the defendant] in the vehicle, I don't think it's a foot race to see whether the officers can get to the vehicle before the defendant steps out and walks a few steps away from the vehicle." J.A. 32. In the court's view, "the effect of granting the motion would be * * * to say that the defendant controls the scope of the search by how fast he can walk or run [from a vehicle]." *Ibid.*

3. The Arizona Court of Appeals, Division Two, reversed. Pet. App. A1-A12. The court of appeals concluded that *Belton* does not apply when a defendant exits a car "voluntarily—that is, not in response to police direction." *Id.* at A5. Instead, the court reasoned, "[*Belton*] applies only when 'the officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation . . . while the defendant is still in the automobile, and the officer subsequently arrests the defendant (regardless of whether the defendant has been removed from or has exited the automobile).'" *Id.* at A6. Applying that understanding, the court held that *Belton* does not justify the vehicle search at issue because, the court stated, the record does not establish "that the police were attempting to initiate contact with [respondent] while he was in the vehicle either by confronting him or by signaling an intent to confront him, notwithstanding the officer's shining the flashlight." *Id.* at A8.[1]

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[1] The court of appeals also held that the search of respondent's vehicle was not justified under *Chimel* v. *California*, 395 U.S. 752 (1969), and was not supported by probable cause. Pet. App. A8-A9.

4. The Arizona Supreme Court denied the State's petition for discretionary review. Pet. App. B1.

SUMMARY OF ARGUMENT

In *New York* v. *Belton*, 453 U.S. 454, 460 (1981), this Court adopted a bright-line rule to guide the officer in the field when the "recent occupant" of an automobile is arrested: the officer may search the passenger compartment of the vehicle that the arrestee occupied as a contemporaneous incident of the arrestee's lawful custodial arrest. The Arizona Court of Appeals' decision in this case limits the application of the *Belton* rule to instances in which the arrestee exited a vehicle at the direction of law enforcement personnel, as opposed to voluntarily, *i.e.*, without police direction. Pet. App. A6. That limitation should be rejected.

The *Belton* rule is grounded on the historic rationales of the search-incident-to-arrest doctrine—the need to protect officer safety and to preserve evidence of a crime. Those rationales are implicated "whenever officers effect a custodial arrest" of the recent occupant of a vehicle. *Michigan* v. *Long*, 463 U.S. 1032, 1049 n.14 (1983). A custodial arrest is a volatile and dangerous event, with heightened risks that a suspect will grab for a weapon or attempt to conceal or destroy evidence of his guilt. In the *Belton* context, those concerns justify the search of a vehicle recently occupied by an arrestee, whether the arrestee was ordered out of the car by police or voluntarily exited the car oblivious to police. It is the arrest of the vehicle's recent occupant, and not the reason he exited the vehicle, that justifies the *Belton* search. A rule that is dependent on whether

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The question presented in this Court, however, is limited to the court of appeals' application of *Belton*. Pet. i.

police confront arrestees while they are still inside a vehicle is antithetical to *Belton*'s officer–safety rationale because it may increase the volatility of an already extremely dangerous encounter.

The Arizona Court of Appeals' decision not only has no connection to the rationales of *Belton*, but it needlessly blurs the bright line drawn by *Belton*. In *Belton*, this Court recognized that it was essential to provide the officer in the field with a "single familiar standard" to determine when a vehicle search is authorized incident to an arrest. 453 U.S. at 458. The court of appeals' decision undermines that important objective by requiring officers to undertake an ad hoc, case-by-case inquiry into the reason that an arrestee exited his vehicle in order to decide whether a search of the passenger compartment is authorized. Pet. App. A7. That inquiry reintroduces the uncertainty and line-drawing problems that this Court sought to eliminate in *Belton*. Indeed, the court of appeals in this case held that the applicability of *Belton* turned on such subjective inquiries as whether respondent was aware of police activity at the residence when he exited his car or interpreted the light shined into his car as a signal that the police intended to confront him. *Ibid.*

Belton has built-in limitations, but those limitations do not support the Arizona Court of Appeals' rule. *Belton* applies only in the case of the lawful arrest of a vehicle's "recent occupant" and only with respect to vehicle searches conducted as a "contemporaneous incident" to such an arrest. 453 U.S. at 460. In some cases, where the individual has moved a considerable distance from the car before the arrest, there may be disagreement on whether an arrestee is a sufficiently "recent occupant" to trigger *Belton*. But it is clear that *Belton* applies in the far more typical situation in which an

officer sees an individual exit the vehicle and arrests him moments later in the same general area that the arrestee might have occupied if he had been ordered out of the car—*i.e.*, in the context at issue in this case.

Under a proper application of *Belton*, the search of respondent's vehicle was valid. Respondent was a "recent occupant" of the car; he was subjected to a "lawful custodial arrest" next to the car; and the search of respondent's car was conducted as "a contemporaneous incident of that arrest." *Belton*, 453 U.S. at 460. The police arrested respondent moments after an officer saw him exit his car and searched his vehicle as part of one continuous event. Accordingly, the challenged search was a reasonable and, thus, lawful intrusion under the Fourth Amendment. The contrary judgment of the Arizona Court of Appeals should be reversed.

ARGUMENT

A SEARCH OF THE PASSENGER COMPARTMENT OF AN AUTOMOBILE IS JUSTIFIED AS A CONTEMPORANEOUS INCIDENT OF THE LAWFUL CUSTODIAL ARREST OF THE VEHICLE'S RECENT OCCUPANT WITHOUT REGARD TO WHETHER THE ARRESTEE EXITED THE VEHICLE VOLUNTARILY OR ON POLICE DIRECTION

A. Under *New York* v. *Belton*, Police Officers May Search The Passenger Compartment Of A Car Incident To The Lawful Custodial Arrest Of Any "Recent Occupant" Of The Vehicle

1. The Fourth Amendment to the Constitution guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated," and further provides that "no Warrants shall issue, but upon probable cause." U.S. Const. Amend. IV. This

Court has long recognized that when there has been a lawful arrest, a search of the person of the arrestee and area within his control "is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment." *United States* v. *Robinson*, 414 U.S. 218, 235 (1973); see *Weeks* v. *United States*, 232 U.S. 383, 392 (1914). There are two longstanding rationales for the search-incident-to-arrest doctrine: the need "to remove any weapons that the [arrestee] might seek to use in order to resist arrest or effect his escape," and the need to prevent the "concealment or destruction" of evidence. *Chimel* v. *California*, 395 U.S. 752, 763 (1969); see *Knowles* v. *Iowa*, 525 U.S. 113, 116-117 (1998) (citing cases).

As this Court has recognized, the custodial arrest is a highly volatile and dangerous event. See *Knowles*, 525 U.S. at 117; *Robinson*, 414 U.S. at 234-235 & n.5. Between 1992 and 2001, for example, 221 of the 643 law enforcement officers who were feloniously killed in the line of duty were slain in arrest situations, making the arrest by far the most dangerous situation that officers routinely confronted during that period. FBI, U.S. Dep't of Justice, *Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted* 33 (2001) (*Uniform Crime Reports*). In 2001, 24 of the 142 law enforcement officers killed in the line of duty were engaged in arrest situations when they were mortally wounded, and in that same year officers were assaulted while attempting arrests on 9107 occasions. *Id.* at 32, 93; see also FBI, U.S. Dep't of Justice, *Killed in the Line of Duty: A Study of Felonious Killings of Law Enforcement Officers* 3 (Sept. 1992).[2] In addition, the moment an

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[2] Drug-related arrests pose a particularly high risk to police officers. In 2001, for example, eight of the 24 officers who were

individual is placed under formal arrest, he has an increased motive "to take conspicuous, immediate steps to destroy incriminating evidence." *Cupp* v. *Murphy*, 412 U.S. 291, 296 (1973).

Accordingly, this Court has recognized that, "[w]hen an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape," and "to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction." *Chimel*, 395 U.S. at 762-763. Further, the officer's need to protect himself and to preserve evidence justifies a search of the area within the arrestee's "immediate control," which the Court has defined as "the area from within which [the arrestee] might gain possession of a weapon or destructible evidence." *Id.* at 763. Because "potential dangers lurk[] in all custodial arrests," *United States* v. *Chadwick*, 433 U.S. 1, 14-15 (1977), the validity of a search incident to arrest "does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found." *Robinson*, 414 U.S. at 235. Rather, "[i]t is the fact of the lawful arrest which establishes the authority to search." *Ibid.*

2. In *New York* v. *Belton*, 453 U.S. 454 (1981), this Court applied those principles to define the permissible scope of a search incident to the arrest of the occupant of an automobile. *Belton* arose when a New York state trooper stopped a car for speeding and thereafter de-

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slain in arrest situations were investigating drug-related matters. *Uniform Crime Reports* 32 (2001); see *id.* at 33 (between 1992 and 2001, 38 of the 221 officers feloniously killed in arrest situations were investigating drug-related matters).

veloped probable cause to arrest the occupants of the vehicle for possession of marijuana. The officer ordered the occupants out of the car and placed them under arrest. See *id.* at 455-456. After "patt[ing] down" the arrestees and separating them, the officer searched the passenger compartment of the car and discovered cocaine. See *id.* at 456. The state courts suppressed the evidence found during the search on the ground that, when the search took place, "there [was] no longer any danger that the arrestee or a confederate might gain access to the article." *Ibid.* This Court reversed.

The Court began its Fourth Amendment analysis with the principle that "a lawful custodial arrest creates a situation which justifies the contemporaneous search without a warrant of the person arrested and of the immediately surrounding area." *Belton*, 453 U.S. at 457. The Court then explained that courts had struggled in applying the search-incident-to-arrest doctrine to the recurring question presented in *Belton*, namely, "whether, in the course of a search incident to the lawful custodial arrest of the occupants of an automobile, police may search inside the automobile *after the arrestees are no longer in it*." *Id.* at 459 (emphasis added). As the Court recognized, the lower courts were in "disarray" on that issue and had "found no workable definition of 'the area within the immediate control of the arrestee' when that area arguably includes the interior of an automobile and the arrestee is its recent occupant." *Id.* at 459 n.1, 460.

The Court admonished that "[a] single familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." 453 U.S. at 458. "[T]o establish the workable rule [that] this cate-

gory of cases requires," the Court adopted "the generalization that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m].'" *Id.* at 460 (quoting *Chimel*, 395 U.S. at 763). Based on that generalization, the Court held that whenever "a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Ibid.* (footnotes omitted).

In *Belton*, the Court emphasized that this rule, "while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found." 453 U.S. at 461 (quoting *Robinson*, 414 U.S. at 235). Just as is true with respect to the search of the person of the arrestee, if the arrest is lawful, then the "search [of the vehicle] incident to the arrest requires no additional justification." *Ibid.* (same). In subsequent cases, this Court has specifically recognized the "bright-line" nature of *Belton*'s search-incident-to-arrest rule. See *Florida* v. *Thomas*, 532 U.S. 774, 776 (2001) ("In [*Belton*], we established a 'bright-line' rule permitting a law enforcement officer who has made a lawful custodial arrest of the occupant of a car to search the passenger compartment of that car as a contemporaneous incident of the arrest."); see also *Michigan* v. *Long*, 463 U.S. 1032, 1049 n.14 (1983).[3]

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[3] As Justice Powell explained in his opinion concurring in the judgment of *Robbins* v. *California*, 453 U.S. 420 (1981), which was

3. An individual need not be inside the vehicle at the time of the arrest for *Belton* to authorize a search of the car incident to the arrest. *Belton* applies as long as the arrestee is a "recent occupant" of the vehicle, 453 U.S. at 460, as was true in the case of Roger Belton and his companions, who had exited the vehicle before it was searched. See *id.* at 456, 462-463; 3 Wayne R. LaFave, *Search and Seizure* § 7.1(b) at 437 & n.26 (3d ed. 1996 & Supp. 2003) (LaFave) ("*Belton* applies whenever the person arrested was * * * the driver of or a passenger in the vehicle just before the arrest.") (collecting cases). Justice Brennan underscored that dimension of *Belton* in his dissent. See 453 U.S. at 463 (The Court's "'bright-line' rule [is] applicable to 'recent' occupants of

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decided the same day as *Belton*, the *Belton* rule is also supported by the diminished expectation of privacy that an individual has in the circumstances giving rise to its application:

> *Belton* trades marginal privacy of containers within the passenger area of an automobile for protection of the officer and of destructible evidence. The balance of these interests strongly favors the Court's rule. The occupants of an automobile enjoy only a limited expectation of privacy in the interior of the automobile itself. This limited interest is diminished further when the occupants are placed under custodial arrest.

Id. at 431 (citations omitted). Cf. *United States* v. *Edwards*, 415 U.S. 800, 808-809 (1974) ("While the legal arrest of a person should not destroy the privacy of his premises, it does—for at least a reasonable time and to a reasonable extent—take his own privacy out of the realm of protection from police interest in weapons, means of escape, and evidence."). An individual's expectation of privacy in the vehicle he was occupying immediately before an arrest is further diminished by the fact that the Fourth Amendment permits police to inventory the contents of impounded vehicles under standardized procedures at a time and place removed from an arrest. See *Colorado* v. *Bertine*, 479 U.S. 367, 371-372 (1987); *South Dakota* v. *Opperman*, 428 U.S. 364 (1976).

automobiles."). And, as a practical matter, that is the only understanding of *Belton* that makes sense.

The vast majority of arrests that take place in the *Belton* context occur "after the arrestees are no longer in [the car]." 453 U.S. at 459. Police officers face an "inordinate risk" when "approach[ing] a person seated in an automobile" and, as a result, often order occupants out of the car when conducting an investigation that may lead to an arrest. *Pennsylvania* v. *Mimms*, 434 U.S. 106, 110 (1977) (per curiam) (officer may, without particularized justification, order a driver out of the car after stopping vehicle); see *Maryland* v. *Wilson*, 519 U.S. 408, 414 (1997); see also *United States* v. *Thornton*, 325 F.3d 189, 195 (4th Cir. 2003) ("[W]hen encountering a dangerous suspect, it may often be much safer for officers to wait until the suspect has exited a vehicle before signaling their presence, thereby depriving the suspect of any weapons he may have in his vehicle, the protective cover of the vehicle, and the possibility of using the vehicle itself as either a weapon or a means of flight."). And it is invariably safer and more efficient for an officer to search the vehicle after an arrestee has exited it. See LaFave § 7.1(a) at 435 n.15 (The "fairly standard practice" is to remove an arrestee before searching the vehicle he occupied).

B. The *Belton* Rule Applies Without Regard To Whether The Arrestee Exited The Vehicle Voluntarily Or On Police Direction

The Arizona Court of Appeals recognized that *Belton* applies "regardless of whether the defendant has been removed from or has exited the automobile," but held that its applicability turns on the reason that the arrestee exited the vehicle. Pet. App. A6. According to the court, *Belton* does not apply if the arrestee exited

the vehicle "voluntarily," but does apply if the arrestee did so "in response to police direction." *Id.* at A5. For several reasons, that limitation is fundamentally flawed.

1. *Belton*, along with the search-incident-to-arrest cases on which the Court relied in *Belton*, makes clear that the custodial arrest gives rise to the authority to the search. See *Belton*, 453 U.S. at 461 ("A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification."); see also, *e.g.*, *United States* v. *Edwards*, 415 U.S. 800, 802-803 (1974); *Chimel*, 395 U.S. at 762-763; *Preston* v. *United States*, 376 U.S. 364, 367 (1964). As explained above, that conclusion follows from the potential dangers inherent in every custodial arrest. Those dangers arise as soon as an individual is placed under custodial arrest, regardless of whether the individual initially got out of his vehicle voluntarily or at the direction of police.

This Court's decision in *Michigan* v. *Long*, *supra*, indicates that *Belton* is not limited to instances in which the arrestee is ordered out of the car by police. In *Long*, police officers saw a car swerve into a ditch. When they stopped to investigate, the driver of the car, "the only occupant of the automobile, met the deputies at the rear of the car." 463 U.S. at 1035. The officers issued the driver a ticket, but did not arrest him. The question in *Long* was whether the officers lawfully conducted a protective *Terry*-type search of the passenger compartment of the car during the encounter. Before turning to that question, however, the Court observed that "[i]t is clear * * * that if the officers had arrested [the driver]," instead of simply issuing him a ticket, "they could have searched the passenger compartment" under *Belton*. *Id.* at 1035 n.1. As the Court explained,

"*Belton* clearly authorizes [an automobile] search *whenever* officers effect a custodial arrest." *Id.* at 1049 n.14 (emphasis added). That was true in *Long* even though the police did not initiate contact with the individual until after he had voluntarily exited his car.

Knowles v. *Iowa*, *supra*, reinforces the conclusion that the arrest is the pivotal event under *Belton*. In that case, the Court held that a police officer may not conduct a warrantless search of a vehicle incident to a traffic citation. The Court explained that "[t]he threat to officer safety from issuing a traffic citation * * * is a good deal less than in the case of a custodial arrest," and that "the concern for destruction or loss of evidence is not present at all" in the case of a citation. 525 U.S. at 117, 119. At the same time, however, the Court reaffirmed—specifically pointing to *Belton*—that when, as here, there *is* a "custodial arrest," police officers may "conduct a full search of the passenger compartment" of a car in order "to search for weapons and protect themselves from danger." *Id.* at 117, 118 (citing *Belton*, 453 U.S. at 460). Unlike the defendant in *Knowles*, respondent was lawfully arrested.

2. The Arizona Court of Appeals' limitation on the application of *Belton* is inconsistent with the historic rationales underlying the search-incident-to-arrest doctrine. The likelihood that an arrestee will lunge for a weapon contained in a vehicle that he has recently occupied does not fluctuate based on the reason that he exited the vehicle. "The danger to the police officer *flows from the fact of the arrest*, and its attendant proximity, stress, and uncertainty." *Robinson*, 414 U.S. at 234 n.5 (emphasis added); see *Washington* v. *Chrisman*, 455 U.S. 1, 7 (1982) ("Every arrest must be presumed to present a risk of danger to the arresting officer."). Thus, regardless of *why* an individual gets out of his

car, "the 'bright line' that [this Court] drew in *Belton* clearly authorizes [a search of the car] *whenever* officers effect a custodial arrest." *Long*, 463 U.S. at 1049 n.14 (emphasis added); see *Thornton*, 325 F.3d at 195 (The rationales underlying *Belton* apply "regardless of whether the arrestee exits the automobile voluntarily or because of confrontation with an officer.").

So too, as of the moment of arrest the suspect has an increased motive to conceal or destroy incriminating evidence. See *Belton*, 453 U.S. at 457; *Chimel*, 395 U.S. at 763; see also LaFave § 5.2(c) at 78. The likelihood that an arrestee will attempt to destroy evidence in a car—and the officer's interest in preventing such efforts—does not vary based on whether an arrestee got out of his car of his own volition or upon an officer's bidding. And, as this Court has stated, the need to preserve the integrity of such evidence following the arrest "justifies an 'automatic' search" under *Belton*. *Long*, 463 U.S. at 1049 n.14; see also *Glasco* v. *Commonwealth*, 513 S.E.2d 137, 142 (Va. 1999) ("[A] knowledgeable suspect has the same motive and opportunity to destroy evidence or obtain a weapon as the arrestee with whom a police officer has initiated contact.").

The facts of this case aptly illustrate the soundness of the rationale on which *Belton* rests. Respondent drove his vehicle to a residence at which police had already found individuals outside with drug paraphernalia, Pet. App. A2, and, as noted, encounters involving illegal drugs pose heightened dangers to officers, note 2, *supra*. Moreover, respondent's vehicle contained both a weapon (a handgun) and contraband (cocaine). Pet. App. A3. Quite apart from the reason that respondent exited his ~~car,~~ when he was placed under custodial arrest moments later respondent had an increased incentive to lunge for the weapon in his car to facilitate

an attempted escape or the drugs in the car to destroy the evidence of a crime.

3. The Arizona Court of Appeals' decision arbitrarily blurs the bright line adopted by *Belton*. It thus would create the same sort of uncertainty from the standpoint of the officer in the field and disarray in the case law that this Court specifically sought to preclude in *Belton*. See also *Wyoming* v. *Houghton*, 526 U.S. 295, 305-306 (1999) ("When balancing the competing interests, our determinations of 'reasonableness' under the Fourth Amendment must take account of * * * practical realities" such as the "bog of litigation * * * in the form of both civil lawsuits and motions to suppress in criminal trials" that would stem from a rule that turns on post hoc inquiries into subjective beliefs of individuals or subtle factual distinctions.).

In *Belton*, the Court emphasized the need to provide police officers with a clear, easily administered rule for the dangerous and recurring situation involving the arrest of the recent occupant of a vehicle. 453 U.S. at 458; see *Robbins*, 453 U.S. at 431 (Powell, J., concurring in judgment) (*Belton* recognizes that "practical necessity requires that we allow an officer in these circumstances to secure thoroughly the automobile without requiring him in haste and under pressure to make close calculations about danger to himself or the vulnerability of evidence."). "A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be 'literally impossible of application by the officer in the field.'" *Belton*, 453 U.S. at 458.

The Arizona Court of Appeals' decision reintroduces the uncertainty and subtlety that *Belton* sought to

foreclose. Under the court's decision, the determination whether *Belton* permits the search of an arrestee's car requires the officer to make an individualized determination of the reason that the arrestee got out of his car. If the arrestee exited his car because the officer "actually confront[ed]" or "signal[ed] confrontation" with him, then *Belton* applies. Pet. App. A6. In contrast, if the officer believes that the arrestee "voluntarily" exited his car without police direction, *id.* at A5, then *Belton* does not apply. In addition, under the court of appeals' decision, if the officer determines that the suspect exited the car simply to "avoid *Belton*'s application," then *Belton* applies regardless of whether the officer initiated contact with the suspect before he exited his vehicle car. *Id.* at A6.

That regime would require law enforcement personnel to make a variety of ad hoc determinations—subject to second-guessing by a court—in the limited time that they have to assess the situation after arresting the recent occupant of a vehicle. *Belton*, 453 U.S. at 458. For example, in deciding whether a *Belton* search is authorized, an officer would have to ascertain (1) whether the arrestee was aware of the police when he got out of the car, a determination that may depend on whether the police are in uniform or a marked squad car, police lights or sirens have been activated, or the arrestee was impaired in a manner that could have affected his awareness of the police, see Pet. App. A7; (2) whether, if the arrestee *appeared* to get out of the car voluntarily, the arrestee nevertheless did so to avoid the application of *Belton*, see *id.* at A6; and (3) whether an officer sufficiently "signal[ed] confrontation" (*ibid.*) with an arrestee while he was in the car, such that the arrestee got out of the car due to the officer's contact as opposed to another reason.

The subjective nature and potential complexity of that determination is illustrated by the facts of this case. The police in this case "shin[ed] a flashlight into [respondent]'s vehicle" as they approached the car, but the court nonetheless concluded that the record failed to show "that the police attempted to initiate contact with [respondent] while he was still in his vehicle or that he had attempted to evade contact with the police by exiting his vehicle" and, indeed, the court concluded that the record in this case contains numerous shortcomings that barred application of *Belton*. Pet. App. A7; see *ibid.* ("[W]e do not believe that, by shining a flashlight into [respondent]'s vehicle, the officer necessarily initiated contact with him."). Short of an admission from the defendant that he was aware of the police when he got out of his car, it is difficult to see how the State could meet the sort of evidentiary burden imposed by the decision in this case.

Respondent speculates (Br. in Opp. 16-17) that applying *Belton* when the police do not initiate contact with the arrestee while he is *in* the vehicle will create line-drawing problems. The problems he foresees would arise when the police do not confront the individual immediately after he has exited the car. There is no such problem in this case. The police officer in this case saw respondent exit his car and contacted him seconds later in the vicinity of the car that he had just occupied. Pet. App. A3. That is the situation in which the question presented is most likely to arise and, in such a case, it is clear that the arrestee has just occupied the vehicle because a police officer invariably sees him exit the car and confronts him moments later.[4]

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[4] See, *e.g.*, *Thomas*, 532 U.S. at 777 (police officer met suspect along side vehicle moments after the officer saw him exit car);

In some cases, lower courts have concluded that *Belton* is inapplicable on the ground that an arrestee had moved beyond the vicinity of the vehicle he had occupied before he was arrested.[5] Any question about the application of *Belton* in that setting provides no reason to deny officers the certainty and protection afforded by *Belton* in the more typical case, such as this one. Here, the arrestee was confronted by police moments after he exited the vehicle in the same place where he might have been if he had been ordered out of the vehicle. See *Wyoming* v. *Houghton*, 526 U.S. at 305 ("[T]he balancing of [Fourth Amendment] interests must be conducted with an eye to the generality of cases."); see also *United States* v. *Alvarez-Sanchez*, 511

Long, 463 U.S. at 1035-1036 (same); *Thornton*, 325 F.3d at 190-191 (suspect stopped car and got out of it before police could pull car over, but police approached suspect along side car moments after he exited it); *United States* v. *Snook*, 88 F.3d 605, 606 (8th Cir. 1996) (as officer arrived on scene, "he immediately saw [the defendant], who was just stepping out of his vehicle," and confronted him); *United States* v. *Willis*, 37 F.3d 313, 317 (7th Cir. 1994) (officer saw arrestee sitting in vehicle and then squatting at rear of car and arrested him alongside vehicle); *State* v. *Wanzek*, 598 N.W.2d 811, 815-816 (N.D. 1999) (suspect exited car immediately before arrest and met officer at rear of vehicle).

[5] See, *e.g.*, *United States* v. *Edwards*, 242 F.3d 928, 938 (10th Cir. 2001) (*Belton* does not apply where suspect "was not arrested in or near the car, but 100-150 feet away from the car"); *United States* v. *Green*, 324 F.3d 375, 379 (5th Cir. 2003) (*Belton* does not apply where officers approached the arrestee "after he exited his vehicle and was at his front door steps"); *United States* v. *Strahan*, 984 F.2d 155, 159 (6th Cir. 1993) (*Belton* does not apply where arrestee was "approximately thirty feet from his vehicle when arrested," such that "the passenger compartment of the vehicle was not within [his] 'immediate control' at the time of the arrest"); *State* v. *Porter*, 6 P.3d 1245, 1249 (Wash. Ct. App. 2000) (*Belton* does not apply where arrestee was 300 feet from vehicle).

U.S. 350, 359-360 (1994); *Albright* v. *Oliver*, 510 U.S. 266, 291 (1994) (Souter, J., concurring in judgment). Moreover, the court of appeals' conclusion that *Belton* does not apply in this case was not based on the notion that respondent had moved too far away from the vehicle he had just occupied, but rather solely on the fact that respondent exited the vehicle voluntarily instead of on police direction. Pet. App. A8.

4. The Arizona Court of Appeals' decision could increase the risks inherent in an already highly volatile encounter, in direct contravention of *Belton*'s officer-safety rationale. Although the court of appeals stated that occupants of a vehicle "cannot avoid *Belton*'s application * * * simply by exiting the vehicle when officers are seen or approach," Pet. App. A6, its decision inevitably creates an incentive for suspects to quickly exit their vehicles in an attempt to render the vehicles "search proof" under *Belton*. See *Thornton*, 325 F.3d at 196; *Glasco*, 513 S.E.2d at 142. When that happens, officers will not know if exiting suspects are attempting to flee, initiate an altercation, or avoid application of *Belton*. At the same time, the Arizona rule may lead police to rush a confrontation with vehicle occupants, in order to ensure that *Belton* will apply in the event of an arrest. See *State* v. *Wanzek*, 598 N.W.2d 811, 815 (N.D. 1999). Either impulse would paradoxically create a more dangerous world for officers than the one that existed before *Belton*.

The court of appeals' decision also fails to take into account that in many situations, including undercover operations, it may be undesirable or infeasible for police to announce their presence and initiate contact with an individual *before* the individual gets out of a vehicle. Cf. *Shipley* v. *California*, 395 U.S. 818, 819 (1969) (per curiam). That may be particularly true where police

are on the lookout for a particular suspect, whose identity may not be known or discernable until the suspect exits a vehicle, or where police do not develop suspicion to investigate until an individual gets out of a vehicle, such as where officers observe an individual get out of a car brandishing a firearm or carrying contraband. See *Thornton*, 325 F.3d at 195 ("[W]e can certainly imagine the hesitancy of an officer to activate his lights and sirens if the officer encounters the arrestee while conducting undercover surveillance in an area."). At the same time, "[m]andating that officers alert a suspect to their presence before he sheds the protective confines of his vehicle would force officers to choose between forfeiting the opportunity to preserve evidence for later use at trial and increasing the risk to their own lives and the lives of others." *Ibid.* Nothing in *Belton* requires this Court to subject law enforcement agents to that dilemma.

C. The Search Of Respondent's Car Was Valid Under *Belton*, Because It Was A Contemporaneous Incident Of Respondent's Lawful Custodial Arrest

1. Under *Belton*, the search of respondent's vehicle was a valid search incident to respondent's arrest. Respondent was a "recent occupant" of the car. *Belton*, 453 U.S. at 460. An officer saw respondent drive up to the residence, park his car, and get out of the vehicle. Pet. App. A2. Although the record does not establish the precise distance between respondent and his vehicle when he was confronted by police, it is clear that respondent was confronted by an officer and subjected to a "lawful custodial arrest" moments after he exited his car while standing in the same general vicinity in relation to the car that he might have occupied if he had been ordered out of the car. In addition, the officer

searched the passenger compartment of respondent's car as "a contemporaneous incident" to respondent's arrest. 453 U.S at 460. The officer arrested respondent, put him in his patrol car, and searched the vehicle as part of one continuous event. See Pet. App. A3.

2. Neither the Arizona Court of Appeals nor respondent has objected to the *Belton* search at issue in this case on the ground that respondent was secured in the patrol car at the time that the search was conducted. Instead, both the court of appeals and respondent have objected to the application of *Belton* based solely on the ground that respondent voluntarily exited the vehicle before he was confronted by police. See Pet. App. A5, A8; Br. in Opp. 7 (*Belton* is "inapplicable in situations involving defendants who are arrested after *voluntarily* departing their vehicles prior to any police contact") (emphasis in original); *id.* at 9, 11-12.

This Court's customary practice is to "deal with the case as it came here and affirm or reverse based on the ground relied on below." *Peralta* v. *Heights Med. Ctr., Inc.*, 485 U.S. 80, 86 (1988); see *Owasso Indep. Sch. Dist.* v. *Falvo*, 534 U.S. 426, 431 (2002) ("[I]t is our practice 'to decide cases on the grounds raised and considered in the Court of Appeals and included in the question on which we granted certiorari.'"). The Court normally does not consider arguments in defense of a judgment that were not presented in a brief in opposition, much less arguments that were not even raised in the courts below. See *Knowles*, 525 U.S. at 116 n.2; *South Cent. Bell Tel. Co.* v. *Alabama*, 526 U.S. 160, 171 (1999); Sup. Ct. R. 15.2. There is no reason for the Court to depart from that settled practice here.

In any event, the fact that respondent was secured in the patrol car at the time of the search does not render *Belton* inapplicable. *Belton* applies only when an in-

dividual has been placed under "lawful custodial arrest." 453 U.S. at 460. That is, by definition, in cases covered by *Belton*, the liberty of the recent occupant has already been substantially restrained by the time of the search. It is commonplace for police officers to handcuff an arrestee and put him in a patrol car before conducting a *Belton* search. Thus, lower courts across the country have routinely and virtually unanimously applied *Belton* to situations in which the recent occupant of a car was arrested, handcuffed, and placed in a squad car at the scene of the arrest before his vehicle was searched.[6] Indeed, the practice of restraining an

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[6] See, *e.g.*, *Thornton*, 325 F.3d at 196 n.2; *United States* v. *Wesley*, 293 F.3d 541, 545-549 & n.8 (D.C. Cir. 2002) (citing cases); *United States* v. *Humphrey*, 208 F.3d 1190, 1202 (10th Cir. 2000); *United States* v. *McLaughlin*, 170 F.3d 889, 890, 891-892 (9th Cir. 1999); *United States* v. *Sholola*, 124 F.3d 803, 817-818 & n.15 (7th Cir. 1997) (citing cases); *Conrod* v. *Davis*, 120 F.3d 92, 94 (8th Cir. 1997), cert. denied, 523 U.S. 1081 (1998); *United States* v. *Mitchell*, 82 F.3d 146, 152 (7th Cir.), cert. denied, 519 U.S. 856 (1996); *United States* v. *Moorehead*, 57 F.3d 875, 877 (9th Cir. 1995); *United States* v. *Doward*, 41 F.3d 789, 791 (1st Cir. 1994) (citing cases), cert. denied, 514 U.S. 1074 (1995); *United States* v. *Riedesel*, 987 F.2d 1383, 1386, 1388 (8th Cir. 1993); *United States* v. *Valiant*, 873 F.2d 205, 206 (8th Cir.), cert. denied, 493 U.S. 837 (1989); *United States* v. *White*, 871 F.2d 41, 44 (6th Cir. 1989); *United States* v. *Karlin*, 852 F.2d 968, 970-971 (7th Cir. 1988), cert. denied, 489 U.S. 1021 (1989); *People* v. *Daverin*, 967 P.2d 629, 631, 632 (Colo. 1998); *State* v. *Harvill*, 963 P.2d 1157, 1158 (Idaho 1998); *People* v. *Bailey*, 639 N.E.2d 1278, 1281-1282 (Ill. 1994), cert. denied, 513 U.S. 1157 (1995); *State* v. *Hensel*, 417 N.W.2d 849, 852-853 (N.D. 1988); *State* v. *Stroud*, 720 P.2d 436, 438 (Wash. 1986); *State* v. *Fry*, 388 N.W.2d 565, 567 (Wis.), cert. denied, 479 U.S. 989 (1986); see also 2 Wayne R. LaFave et al., *Criminal Procedure* § 3.7(a) at 203 & n.14 (2d ed. 2003) ("[A] search of a vehicle under *Belton* is permissible even after the defendant has been removed from the car, handcuffed and placed in a squad car.") (citing cases).

arrestee on the scene before searching a vehicle that he just occupied is so prevalent that, as a practical matter, holding that *Belton* does not apply in that setting would "largely render *Belton* a dead letter." *United States* v. *Wesley*, 293 F.3d 541, 548 (D.C. Cir. 2002).

That usual police practice fully comports with *Belton*. In *Belton*, this Court rejected the proposition—advanced by the dissenters in that case—that, "[w]hen the arrest has been consummated and the arrestee safely taken into custody, the justifications [for a warrantless search] cease to apply," because "at that point there is no possibility that the arrestee could reach weapons or contraband." 453 U.S. at 465-466 (Brennan, J., joined by Marshall, J., dissenting). Instead, the Court adopted the "generalization" that weapons or contraband within the passenger compartment of a car are "generally, even if not inevitably, within the area into which an arrestee [who is the vehicle's recent occupant] might reach." *Id.* at 460. Thus, as the *Belton* dissenters specifically recognized, the rationale of *Belton* applies even after a recent occupant has been handcuffed and put in a squad car. See *id.* at 468 ("Under the approach taken today, the result would presumably be the same even if Officer Nicot had handcuffed Belton and his companions in the patrol car before placing them under arrest."); see also *Wesley*, 293 F.3d at 548 ("*Belton* proclaimed its rule without caveat" and "[t]he dissenters in *Belton* understood the case to establish a flat rule, applicable regardless of the status of the defendants at the time of the search.").[7]

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[7] Indeed, two of the lower court cases that the Court pointed to in *Belton* to illustrate the need for a "straightforward rule" governing "the proper scope of a search of the interior of an automobile incident to a lawful custodial arrest of its occupants"

Even after individuals are taken into custody, they continue to pose a potentially grave threat to law enforcement personnel. See, *e.g.*, *Plakas* v. *Drinski*, 19 F.3d 1143, 1145 (7th Cir.) (suspect handcuffed in backseat of squad car escaped from squad car and later confronted police), cert. denied, 513 U.S. 820 (1994); *United States* v. *Sanders*, 994 F.2d 200, 210 & n.60 (5th Cir.) (citing incidents in which police officers were slain by handcuffed arrestees), cert. denied, 510 U.S. 955 (1993); *Forge* v. *City of Dallas*, No. 3-03-CV-0256-D, 2003 WL 21149437, at * 1 (N.D. Tex. May 19, 2003) (arrestee who was handcuffed and secured with a seatbelt in a locked patrol car "suddenly and without warning * * * slipped out of his handcuffs, released the seat belt latch, opened the locked car door, and tried to escape from custody"); see also *United States* v. *Doward*, 41 F.3d 789, 793 n.5 (1st Cir. 1994) (discussing "the unpredictable developments ultimately confronting" police in *Belton* context), cert. denied, 514 U.S. 1074 (1995); see also *id.* at 791-793 & n.1.[8]

(*Belton*, 453 U.S. at 459 & n.1)—*Hinkel* v. *Anchorage*, 618 P.2d 1069, 1069-1070 (Alaska 1980), cert. denied, 450 U.S. 1032 (1981), and *Ulesky* v. *State*, 379 So.2d 121, 123 (Fla. Dist. Ct. App. 1979)—involved situations in which the arrestee was in the back of the patrol car at the time that the vehicle was searched. Applying *Chimel* v. *California*, *supra*, the court of appeals in *Ulesky* reasoned that "once appellant was placed in the patrol car and thereby separated from her purse [in the vehicle], neither of the justifications for the search incident to arrest exception were present." 379 So.2d at 126. As the dissenters in *Belton* recognized (453 U.S. at 468), that reasoning, while arguably consistent with *Chimel*'s case-specific analysis, is out of step with the generalization made by the Court in *Belton* in order to provide officers in the field with a "single familiar standard" in this critical context. *Id.* at 458.

[8] In 2001, two officers were killed and 7343 were assaulted while in the process of handling, transporting, or maintaining the

The bright-line *Belton* rule permits officers to protect themselves against the small but nevertheless potentially deadly risk that an arrestee who has been handcuffed and remains at the scene of the arrest will escape from custody. That protection ensures that, if an arrestee does break free, he will not succeed in retrieving a weapon or contraband from a nearby vehicle. Thus, *Belton* does not prevent officers from engaging in the prudent and widespread practice of restraining an arrestee and putting him in a squad car before searching the vehicle that the arrestee has just occupied. See *United States* v. *Mitchell*, 82 F.3d 146, 152 (7th Cir.) ("The fact that [the arrestee] had been handcuffed and placed in the police vehicle just prior to the commencement of the search that yielded the firearm does not affect the lawfulness of the search."; "it does not make sense to prescribe a constitutional test that is entirely at odds with safe and sensible police procedures."), cert. denied, 519 U.S. 856 (1996).

3. At the same time, there are limitations on how *Belton* searches may be conducted. For example, *Belton* requires that the search of the vehicle be undertaken as "a contemporaneous incident of th[e] arrest." 453 U.S. at 460. Compare, *e.g.*, *Dyke* v. *Taylor*

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custody of prisoners. *Uniform Crime Reports* 32, 93 (2001). In addition, on September 28, 2001, a police officer was killed by a suspect who managed to free himself from his handcuffs, retrieve a handgun, and shoot the officer. *Id.* at 49; see also *Uniform Crime Reports* 49 (1998) (On May 19, 1998, two police officers were killed when a handcuffed suspect in the back seat of their patrol car managed to free himself, retrieve one of the officer's guns, and mortally wound both officers.); *id.* at 50 (officer killed on January 12, 1998, by individual who had been ordered out of his car, when the individual managed to free himself, retrieve a rifle from his car, and mortally wound the officer).

Implement Mfg. Co., 391 U.S. 216, 220 (1968) (search of arrestee's car was "too remote in time or place to [be] incidental to the arrest," where search did not take place until the arrestee was in custody inside the courthouse and his car had been moved by police from the site of the arrest to the street outside the courthouse); *Preston*, 376 U.S. at 368 (search of arrestee's car was not incident to arrest when search was conducted after the car had been towed from the scene of the arrest to a garage); see also *Chadwick*, 433 U.S. at 15 (search of footlocker was too remote when it was conducted "more than an hour" after arrest); see also *Belton*, 453 U.S. at 461-462 (distinguishing *Chadwick*); *United States* v. *Lugo*, 978 F.2d 631, 634-635 (10th Cir. 1992) (*Belton* does not apply after arrestee has been restrained and removed from scene of the arrest).

As the District of Columbia Circuit has explained, a search meets the contemporaneous-incident standard whenever "it is an integral part of a lawful custodial arrest process." *United States* v. *Abdul-Saboor*, 85 F.3d 664, 668 (D.C. Cir. 1996) (Ginsburg, J.). Thus, in deciding whether a search incident to arrest is proper, "[t]he relevant distinction turns not upon the moment of the arrest versus the moment of the search but upon whether the arrest and search are so separated in time or by intervening events that the latter cannot fairly be said to have been incident to the former." *Ibid.* Under that approach, the search of respondent's vehicle was conducted as a contemporaneous incident of respondent's arrest. The search and arrest were part of "one continuous event," *id.* at 669, which began when respondent was arrested moments after he exited his car and ended shortly thereafter when the officer searched respondent's vehicle. See p. 2, *supra*.

In addition, *Belton* applies only to searches incident to the arrest of the "recent occupant" of the vehicle. 453 U.S. at 460. As discussed, although that term—like the contemporaneous-incident standard—may require careful line-drawing in outlying cases, it clearly encompasses typical scenarios, such as that here, when the police see an individual exit the vehicle and confront him moments later. See pp. 18-20, *supra*. In determining whether *Belton* authorizes a vehicle search in outlying cases, courts should assess the reasonableness of applying the *Belton* rule in light of the basic concerns underlying the search-incident-to-arrest doctrine and the facts and circumstances of the particular arrest and search at issue. But, as discussed above, any difficulty that courts may experience in drawing lines in such atypical cases provides no reason for adopting the limitation imposed by the Arizona Court of Appeals in this case.

In *Thorton*, the Fourth Circuit concluded that a *Belton* search was lawful where the police officers confronted the arrestee moments after he had voluntarily exited his car in "close proximity" to the car. 325 F.3d at 196. As the court of appeals explained, "[t]he conceded close proximity, both temporally and spatially, of [the arrestee] and his car at the time of his arrest provides adequate assurance that application of the *Belton* rule to cases like this one does not render that rule limitless." *Ibid.* The circumstances underlying the *Belton* search challenged in this case provide the same assurance: the police saw respondent exit his car, met and arrested him moments later, and immediately searched the vehicle while respondent was still at the scene of the arrest. The Arizona Court of Appeals erred in concluding that such a vehicle search falls outside *Belton*'s bright-line rule.

CONCLUSION

The judgment of the Arizona Court of Appeals should be reversed.

Respectfully submitted.

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